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In reference to the meeting held at the Planning Commission on November 29, 2017, the presentation given by the FIA regarding “Phase 3” of the National Response Center for Cyber Crime (NR3C) and the forthcoming Prevention of Electronic Crimes Act (PECA) Rules, Digital Rights Foundation (DRF) puts forward the following recommendations. DRF recognizes the Commission’s inclusion of civil society as a positive step and hopes that this engagement continues in the future.

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### **Recommendations:**

- 1) **PECA Rules:** When drafting rules u/s 51 of the PECA, the government is under an obligation to ensure that the rules are compatible with principles of human rights—particularly the right to freedom of expression, the right to privacy and protection of minorities. It is hoped that the Rules will expand the rights available to citizens and guarantee protections against intrusion in their digital spaces rather than further curtailing them.
- 2) **Greater resource allocation:** There has been an exponential growth in cyber crime cases at the FIA over the years. According to the FIA’s own figures, not only have the number of cases gone up, but the rate of growth of complaints has also grown (complaints rose 20% from 2015 to 2016, while there was a 30% rise from 2016 to 2017). Since the NR3C’s Phase 3 proposes to cover the five-year period from 2017 to 2022, it means that the increase in resources should neither be limited to the current demand, nor the current rate of growth. With the increase access to ICTs and awareness regarding cyber crimes, the FIA will need to respond to an unprecedented number of complaints. The allocation of resources, thus, needs to take into account these unique circumstances, and DRF urges the Planning Commission to increase the grant allocated to the FIA.
- 3) **Mechanism and means to deal with cases in foreign jurisdictions:** In many cases where either the accused or the complainant is located outside Pakistan, the NR3C lacks the capacity to take action despite being empowered to do so u/s. 1(4) of PECA. Mechanisms of investigation need to catch up with substantive law. DRF recommends that there be at least one officer in each branch dealing with cases in foreign jurisdictions, with specialized training in different jurisdictions, international law and conflict of laws. The Ministry of Information Technology, Planning Commission and Government of Pakistan are urged to define “international cooperation” u/s 42 of PECA while upholding the rights of Pakistani citizens.
- 4) **Sex-disaggregated data:** The FIA, fulfilling its statutory obligation to report to Parliament u/s 53 of PECA, is requested produce data regarding the number of online harassment cases



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and the number of cases registered by women under each section of PECA. These figures should be public and will allow for better policy-making and allocation of resources. These figures should include the number of female complainants, number of cases registered/investigated/prosecuted/resolved u/s. 21, 22 and 24, number of cases concerning female complainants converted into FIRs, number of cases concerning female complainants that were resolved, number of cases concerning female complainants that were resolved through settlements, and length of investigative and prosecutorial time for cases concerning female complainants.

- 5) **Regular reporting and performance review of the FIA:** DRF urges the FIA to fulfill its obligations u/s 53 and submit bi-annual reports, something it has failed to do in two successive six-month periods. Furthermore, based on the reports there needs to be an assessment of the FIA's performance predicated on the feedback from complainants and litigants and performance markers such as the rate of conversion from a complaint to an FIR, number of women whose cases were registered and performance reviews of investigators and prosecutors.
- 6) **Creation of a separate desk for online harassment within the NR3C:** Given the specialized nature of online harassment cases and the gender-sensitivity required for complainants/victims, DRF recommends that a dedicated desk for cyber harassment to handle cases u/s 21 and 24 of PECA should be formulated. This desk should be the point of first contact for complainants of online harassment equipped with officers specifically trained in the nuances of online harassment, its various forms and gender-sensitivity as well as counselling services.
- 7) **Rapid Response Cell:** Given the urgent nature of certain cases of online harassment, where leaked information can harm personal safety or cause immediate reputational harm, a rapid response cell that is operational 24/7 should be established in addition to the regular operations of the NR3C.
- 8) **Privacy and Confidentiality:** One of the biggest barriers for reporting cases of cyber crime to law enforcement is the fear of leaked information. Many complainants require the assurance of confidentiality as a pre-requisite to reporting. The FIA is urged to develop clear, accessible and publicly available Standard Operating Procedures (SOPs) on privacy, confidentiality and protection of evidentiary data and identity of the complaints. These SOPs should be translated into regional languages and displayed in the offices of the NR3C.
- 9) **Greater accessibility for disabled persons:** Functioning elevators, ramp for wheelchairs, accessible toilet facilities and in-person assistance in filing applications are minimum requirements that every NR3C office should meet to ensure that disabled persons do not have to face additional hurdles in registering and pursuing complaints.
- 10) **Coordination with other departments:** When cases involve both online and offline crimes, complainants are often given contradictory advice regarding the jurisdiction of the



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police and NR3C. DRF recommends that channels of communication between police stations and cyber crime stations be established.

- 11) **Psychological needs:** DRF urges the FIA to make provision for psychological services at NR3C desks to help complainants deal with the psychological trauma and distress that they might experience due to online harassment and violence. All officers at the NR3C, especially those dealing directly with victims, should be given training on how to address trauma. The NR3C should offer a safe space for victims and help them deal with their trauma.
- 12) **Case management and tracking system:** Complainants should be able to track and receive regular updates on the status of their case through an accessible and easy-to-use case management system/portal. Digital copies of the case file and evidence filed should be kept on a secure server.
- 13) **Gender sensitization:** Several female complainants who have approached the NR3C have reported being shamed for their choices and discouraged from pursuing cases by officers at the NR3C. DRF has observed that while higher officials, such as Deputy Directors and Assistant Directors, are sensitive to these issues and proactively reassure complainants, this attitude is not always reflected in the behavior of individual IOs. Since many cases involve sharing of intimate data and gendered harassment, there is a need to ensure that the officers (especially those directly dealing with complainants), as well as the overall environment of the offices, are conducive to female complainants and provide a safe and judgment-free space. DRF recommends that a quota of at least 33% of all Investigation Officers and Prosecutors be established, and all officers—including the female ones—be given extensive gender-sensitivity training. It is also recommended that women's rights organizations be included and assist in developing these trainings.
- 14) **Check on performance of investigators and prosecutors:** Internal mechanisms should be in place to review the performance of investigators and prosecutors as they are the most important personnel involved in a case. Their competence and behavior towards the complainant can lead to miscarriage of justice. Complainants should be able to register concerns and complaints regarding their assigned officers to a senior presiding officer to each regional zone, which should automatically trigger an inquiry. A new officer should be assigned immediately in case of misconduct or failure to perform duties.
- 15) **Greater technical expertise:** Several complaints to the NR3C experience substantial investigative delay or are dropped completely due to lack of technical abilities of officers and technologies available to the FIA. DRF recommends that measures be taken to capacitate them accordingly to not only meet current trends in cyber crime, but also keep abreast with developments in the five-year coverage period. This capacity building needs to be an on-going and constant process, thus, DRF recommends substantial investment in research at the NR3C to address the needs to litigants/complainants.
- 16) **Training for judges on cyber crime law, internet governance and online harassment:** Internet governance and cyber crime should be included in the curriculum of provincial



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judicial academies to ensure that judges are not only familiar with the law regarding the internet, but also have a firm grip of the technologies involved in the process. It has been observed that judges are not only ignorant of the law regarding the internet and cyber crime, but that they also fundamentally misunderstand the governance and infrastructure of the internet itself, which leads to bad jurisprudence and, at times, unimplementable orders.

- 17) **Collaboration with organizations working on online harassment:** DRF recommends more public-private partnerships by the government to ensure that the public institutions work with civil society and academia to complement each other's work. A mutually beneficial MOU between DRF's cyber harassment helpline and NR3C will ensure the complainants obtain timely and comprehensive support.